

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

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### Legend:

Parent =

Sub 1 =

Sub 2 =

Old FSub 3 =

New FSub 3 =

FSub 4 =

State A =

Business A =

Country A =

Date A =

Date B =

Date C =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

Dear :

This letter responds to your March 22, 2011 request for rulings on certain federal income tax consequences of the Transactions (as defined below). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### **Summary of Facts**

Parent is the parent of a corporate group engaged in Business A that includes domestic and foreign corporations. Parent also is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the "Parent

Group”). Parent wholly and directly owns Sub 1, which wholly and directly owns Sub 2; each of Parent, Sub 1, and Sub 2 is a State A corporation that primarily conducts business in the United States, and Sub 1 and Sub 2 are members of the Parent Group. Sub 2 acts as the principal holding company for the Parent Group’s foreign subsidiaries.

Old FSub 3, a Country A limited company, elected to change its U.S. federal tax classification from a partnership to an association effective Date A (the “Election”). Old FSub 3 thus became a corporation within the meaning of section 7701(a)(3) and a controlled foreign corporation within the meaning of section 957 (a “CFC”). Prior to the Conversion described in step (i) below, Old FSub 3 had a shares of common stock outstanding; each of Sub 1 and Sub 2 directly owned b % thereof. Old FSub 3 operated as a holding company for shares of FSub 4.

FSub 4, a Country A company limited by shares, also is a corporation within the meaning of section 7701(a)(3) and a CFC. FSub 4 serves as the group’s primary operating company in Country A. FSub 4 currently has c shares of common stock outstanding, d % of which is directly owned by Sub 2, and e % of which is owned by unrelated foreign persons; prior to the Conversion, Old FSub 3 directly owned the remaining f %. Each of Parent, Sub 1, Sub 2, and FSub 4 is (and Old FSub 3 was) an accrual-method corporation whose taxable year ends Date B.

### Transactions

For what are represented to be valid business reasons, Parent has undertaken or will undertake the following series of transactions (collectively, the “Transactions”) in the order listed below:

- (i) On or about Date C, Old FSub 3 changed its Country A legal designation from a limited company to a company limited by shares. Upon its conversion (the “Conversion”) to a company limited by shares (“New FSub 3”), New FSub 3 issued g common shares in place of Old FSub 3’s existing a shares. Each of Sub 1 and Sub 2 directly owns b % of New FSub 3’s common shares. New FSub 3 is an accrual-method taxpayer whose taxable year ends Date B; it operates as a holding company for FSub 4 shares, of which it directly owns f %.
- (ii) Parent will borrow \$ h from unrelated parties on a short-term basis.
- (iii) Immediately after step (ii), Parent will lend \$ h to Sub 2 on a short-term basis.
- (iv) Immediately after step (iii), Sub 2 will contribute \$ h to New FSub 3 in exchange for i newly issued New FSub 3 common shares. This transaction will be denominated in and consummated with U.S. dollars, and after the transaction, New FSub 3 will not convert the U.S. dollars into Country A currency.

- (v) Approximately one week after step (iv), Sub 2 will transfer j FSub 4 shares to New FSub 3 in exchange for \$ h (together with step (iv), the “Exchange”). This transaction will be denominated in and consummated with U.S. dollars. On behalf of Sub 2, New FSub 3 will pay the amount required to be paid in Country A currency to the Country A tax authorities with respect to the share transfer. New FSub 3 will have an account receivable from Sub 2 in consideration for New FSub 3’s payment of Sub 2’s Country A tax liability.
- (vi) Immediately after the Exchange, Sub 2 will repay its \$ h borrowing from Parent.
- (vii) Immediately after step (vi), Parent will repay its \$ h borrowing from unrelated parties.

The Transactions are being undertaken in accordance with a single plan and will be completed in as short a time frame as possible.

### **Representations**

The following representations have been submitted with respect to the Election, the Conversion, and the Exchange:

#### The Election

- (a) A gain recognition agreement (“GRA”) with respect to the Election was entered into in accordance with Treas. Reg. § 1.367(a)-8(c) and included with the Parent Group’s timely-filed tax return for the taxable year in which the Election occurred (as required by Treas. Reg. § 1.367(a)-8(d)).

#### The Conversion

- (b) At the time of the Conversion, the fair market value of the New FSub 3 stock received by Sub 1 and Sub 2 was approximately equal to the fair market value of the Old FSub 3 stock surrendered in the Conversion.
- (c) There is no plan or intention by Sub 1 or Sub 2 to sell, exchange, or otherwise dispose of any of the shares of New FSub 3 stock received in the Conversion.
- (d) Immediately following the Conversion, Sub 1 and Sub 2 owned all of the outstanding New FSub 3 stock, and they owned such stock solely by reason of their ownership of Old FSub 3 stock immediately prior to the Conversion.
- (e) New FSub 3 has no plan or intention to issue additional shares of its stock following the Conversion, other than in connection with the Exchange.

- (f) Immediately following the Conversion, the assets and liabilities of New FSub 3 were the same as those of Old FSub 3 immediately prior to the Conversion (except for any assets used to pay expenses incurred in connection with the Conversion; such expenses were less than one percent of the fair market value of the net assets of Old FSub 3 immediately prior to the Conversion), and Old FSub 3 did not distribute any of its assets in the Conversion.
- (g) At the time of the Conversion, Old FSub 3 did not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Old FSub 3.
- (h) New FSub 3 has no plan or intention to redeem or otherwise reacquire any stock issued in the Conversion.
- (i) New FSub 3 has no plan or intention to sell or otherwise dispose of any assets held by Old FSub 3 immediately before the Conversion, except for dispositions made in the ordinary course of business.
- (j) The liabilities of Old FSub 3 assumed by New FSub 3 (within the meaning of section 357(d)) plus the liabilities, if any, to which the transferred assets were subject at the time of the Conversion were incurred by Old FSub 3 in the ordinary course of its business and are associated with the assets transferred.
- (k) At the time of the Conversion, the fair market value of the assets of Old FSub 3 equaled or exceeded the sum of the liabilities assumed by New FSub 3 (within the meaning of section 357(d)).
- (l) Sub 1 and Sub 2 received solely New FSub 3 common stock in the Conversion.
- (m) Each of the parties to the transaction paid its own expenses, if any, incurred in connection with the Conversion.
- (n) At the time of the Conversion, Old FSub 3 was not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- (o) The Conversion was consummated pursuant to a plan of reorganization, was effected solely by the change in Old FSub 3's Country A legal designation, and was undertaken for a bona fide non-U.S.-tax business purpose.
- (p) Immediately prior to the Conversion, Old FSub 3 was a CFC (within the meaning of section 957) with respect to which Sub 1 and Sub 2 were section 1248 shareholders.
- (q) At all times before the Conversion, Old FSub 3 was not a passive foreign investment company within the meaning of section 1297(a) ("PFIC").

- (r) Immediately after the Conversion, New FSub 3 was a CFC (within the meaning of section 957) with respect to which Sub 1 and Sub 2 were section 1248 shareholders.
- (s) Immediately after the Conversion, New FSub 3 was not a PFIC within the meaning of section 1297(a).
- (t) Old FSub 3 did not hold any United States real property interests (within the meaning of section 897(c)(1)) immediately before the Conversion, and New FSub 3 did not hold any such interests immediately after the Conversion.
- (u) At the time of the Conversion, Old FSub 3 had no effectively connected earnings and profits (within the meaning of section 884(d)) or accumulated effectively connected earnings and profits (within the meaning of section 884(b)(2)(B)(ii)).
- (v) The notice requirements of Treas. Reg. § 1.367(b)-1(c)(1) will be met with respect to the Conversion.
- (w) Parent will enter into a new GRA with respect to the Election in accordance with Treas. Reg. § 1.367(a)-8(k)(14)(iii) and will include such GRA with the Parent Group's timely-filed tax return for the taxable year in which the Conversion occurred (as required by Treas. Reg. § 1.367(a)-8(d)).

#### The Exchange

- (x) No stock or securities will be issued for services rendered to or for the benefit of New FSub 3 in connection with the Exchange, and no stock or securities will be issued for indebtedness of New FSub 3.
- (y) The Exchange is not the result of the solicitation by a promoter, broker, or investment house.
- (z) Sub 2 will not retain any rights in the FSub 4 stock transferred to New FSub 3.
- (aa) The stock of FSub 4 transferred to New FSub 3 will not be subject to any liabilities, and FSub 3 will not assume any liabilities of Sub 2 (within the meaning of section 357(d)).
- (bb) The fair market value of the assets of New FSub 3 will exceed the amount of its liabilities immediately after the Exchange.
- (cc) The fair market value of the FSub 4 shares to be transferred by Sub 2 to New FSub 3 will equal or exceed Sub 2's adjusted basis therein.

- (dd) Immediately before the Exchange there will be no indebtedness between Sub 2 and New FSub 3, and no indebtedness will be created in favor of Sub 2 as a result of the Transactions.
- (ee) The Exchange will occur under a plan agreed upon before the Transactions in which the rights of the parties are defined.
- (ff) Except as otherwise described above, all exchanges that form a part of the Exchange will occur on approximately the same date.
- (gg) Sub 2 has no plan or intention to dispose of shares of New FSub 3 after the Exchange.
- (hh) New FSub 3 has no plan or intention to redeem or otherwise reacquire any stock to be issued in the Exchange.
- (ii) Taking into account any issuance of additional shares of New FSub 3 stock; any issuance of stock for services; the exercise of any New FSub 3 stock rights, warrants, or subscriptions; a public offering of New FSub 3 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of New FSub 3 to be received in the exchange, Sub 2 will be in “control” of New FSub 3 within the meaning of section 368(c).
- (jj) In the Exchange, Sub 2 will receive New FSub 3 stock with a fair market value approximately equal to the fair market value of the FSub 4 stock transferred to New FSub 3.
- (kk) New FSub 3 will remain in existence and retain and use the property transferred to it in a trade or business.
- (ll) New FSub 3 has no plan or intention to dispose of the FSub 4 stock received in the Exchange other than in the normal course of business operations.
- (mm) Except as otherwise described above, each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the Exchange.
- (nn) New FSub 3 will not be an investment company within the meaning of section 351(e)(1) and Treas. Reg. § 1.351-1(c)(1)(ii).
- (oo) Sub 2 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), and the New FSub 3 stock received in the Exchange will not be used to satisfy the indebtedness of Sub 2.
- (pp) New FSub 3 will not be a “personal service corporation” within the meaning of section 269A.

- (qq) Immediately prior to the Exchange, New FSub 3 and FSub 4 will be CFCs (within the meaning of section 957) with respect to which Sub 1 and Sub 2 will be section 1248 shareholders.
- (rr) At all times before the Exchange, FSub 4 was not a PFIC within the meaning of section 1297(a).
- (ss) Immediately after the Exchange, New FSub 3 and FSub 4 will be CFCs (within the meaning of section 957) with respect to which Sub 1 and Sub 2 will be section 1248 shareholders.
- (tt) Immediately after the Exchange, FSub 4 will not be a PFIC within the meaning of section 1297(a).
- (uu) The notice requirements of Treas. Reg. § 1.367(b)-1(c)(1) will be met with respect to the transfer of the FSub 4 shares to New FSub 3.
- (vv) Parent will enter into a GRA with respect to the transfer of FSub 4 shares to New FSub 3 (in accordance with Treas. Reg. § 1.367(a)-8(c)) and will include such GRA with the Parent Group's timely-filed tax return for the taxable year in which the Exchange occurs (as required by Treas. Reg. § 1.367(a)-8(d)).

### **Rulings**

Based solely on the information submitted and the representations made above, we rule as follows regarding the Conversion and the Exchange:

#### **The Conversion**

- (1) For U.S. federal income tax purposes, the Conversion is treated as a transfer by Old FSub 3 of its assets to New FSub 3 in exchange for stock of New FSub 3 and New FSub 3's assumption of the liabilities of Old FSub 3, followed by a liquidation of Old FSub 3 in which the New FSub 3 stock was distributed to Sub 1 and Sub 2 in cancellation of their interests in Old FSub 3. Treas. Reg. § 1.367(b)-2(f)(2).
- (2) The Conversion qualifies as a reorganization within the meaning of section 368(a)(1)(F). Old FSub 3 and New FSub 3 each was "a party to a reorganization" within the meaning of section 368(b).
- (3) No gain or loss was recognized by Old FSub 3 upon the deemed transfer of its assets to New FSub 3 in exchange for New FSub 3 stock and New FSub 3's deemed assumption of Old FSub 3's liabilities in the Conversion (sections 361(a) and 357(a)).



- (4) No gain or loss was recognized by New FSub 3 on the deemed receipt of Old FSub 3 assets in exchange for New FSub 3 stock and New FSub 3's deemed assumption of Old FSub 3's liabilities in the Conversion (section 1032(a)).
- (5) Immediately after the Conversion, New FSub 3's basis in each asset deemed received from Old FSub 3 in the Conversion was the same as Old FSub 3's basis in such asset immediately before the Conversion (section 362(b)).
- (6) New FSub 3's holding period for each asset deemed received from Old FSub 3 in the Conversion includes the period during which such asset was held by Old FSub 3 (section 1223(2)).
- (7) No gain or loss was recognized by Old FSub 3 upon the deemed distribution of the New FSub 3 stock to Sub 1 and Sub 2 in the Conversion (section 361(c)(1)).
- (8) Provided that a new GRA with respect to the Election is entered into in accordance with Treas. Reg. § 1.367(a)-8(k)(14)(iii) and included with the Parent Group's timely-filed tax return for the taxable year in which the Conversion occurred (as required by Treas. Reg. § 1.367(a)-8(d)), neither Sub 1 nor Sub 2 will be treated as having recognized gain or loss on its exchange of Old FSub 3 stock for New FSub 3 stock in the Conversion (section 354(a)(1)).
- (9) Immediately after the Conversion, the basis of the New FSub 3 stock received by Sub 1 and Sub 2 in the Conversion was the same as the basis of the Old FSub 3 stock surrendered in exchange therefor (section 358(a)(1)).
- (10) Sub 1 and Sub 2's respective holding periods for the New FSub 3 stock received in the Conversion include their respective holding periods for the Old FSub 3 stock exchanged therefor, provided that the Old FSub 3 stock was held as a capital asset on the date of the Conversion (section 1223(1)).
- (11) The Conversion did not result in a closing of the tax year, and New FSub 3 succeeded to and took into account the tax attributes of Old FSub 3 enumerated in section 381(c) (section 381(b) and (c) and Treas. Reg. §§ 1.367(b)-7 and -9, 1.381(b)-1(a)(2)).
- (12) The Exchange will not affect the treatment of the Conversion as a reorganization within the meaning of section 368(a)(1)(F) (Rev. Rul. 96-29, 1996-1 C.B. 50).

#### The Exchange

- (13) For federal income tax purposes, the circular flow of cash described in steps (ii) - (vii) above will be disregarded (Rev. Rul. 83-142, 1983-1 C.B. 68), and the

Exchange will be treated as a transfer by Sub 2 of FSub 4 stock to New FSub 3 in exchange for New FSub 3 stock.

- (14) Provided a GRA with respect to the transfer of FSub 4 shares to New FSub 3 is entered into in accordance with Treas. Reg. § 1.367(a)-8(c) and included with the Parent Group's timely-filed tax return for the taxable year in which the Exchange occurs (as required by Treas. Reg. § 1.367(a)-8(d)), Sub 2 will recognize no gain or loss on the receipt of New FSub 3 stock in deemed exchange for FSub 4 stock in the Exchange (sections 351(a) and 357(a); Treas. Reg. §§ 1.367(a)-3(b)(1)).
- (15) No gain or loss will be recognized by New FSub 3 on the receipt of FSub 4 stock in deemed exchange for New FSub 3 stock in the Exchange (section 1032(a)).
- (16) Sub 2's basis in the New FSub 3 stock received in the Exchange will be the same as the basis of the FSub 4 stock deemed exchanged therefor (section 358(a)(1)).
- (17) New FSub 3's basis in the FSub 4 stock received in the Exchange will be the same as the basis of such stock in the hands of Sub 2 immediately before the Exchange (section 362(a)(1)).
- (18) Sub 2's holding period for the New FSub 3 stock received in the Exchange will include the period during which Sub 2 held its FSub 4 stock deemed exchanged therefor, provided that the FSub 4 stock is held as a capital asset on the date of the Exchange (section 1223(1)).
- (19) New FSub 3's holding period for the FSub 4 stock received in the Exchange will include the period during which Sub 2 held its FSub 4 stock (section 1223(2)).
- (20) The Exchange will be an exchange to which Treas. Reg. §§ 1.367(b)-1(c) and 1.367(b)-4(a) apply.
- (21) Provided the notice requirement of § 1.367(b)-1(c)(1) will be met, no amount will be included in Sub 2's income as a deemed dividend under Treas. Reg. § 1.367(b)-4(b).

### **Caveats**

No opinion is expressed about the tax treatment of the Transactions under other provisions of the Code and regulations or on the tax treatment of any conditions existing at the time of, or effects resulting from, the Transactions that are not specifically covered by the above rulings. Additionally, no opinion is expressed (and none was requested) regarding (i) the federal tax classification of any of the entities involved in the Transactions, (ii) the validity of any entity classification election made with respect to any of the entities, (iii) New FSub 3's payment of Country A share transfer taxes on

behalf of Sub 2, (iv) the account receivable New FSub 3 will have from Sub 2 in consideration for the payment of Country A share transfer taxes, and (v) the application of sections 956 or 988 to the facts described herein.

### **Procedural Statements**

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to the taxpayer's federal income tax return for the taxable year in which the transaction is consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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Maury Passman  
Assistant to the Branch Chief, Branch 1  
Office of Associate Chief Counsel  
(Corporate)

cc: